

AG Contract No.: KR05-0088TRN
ADOT ECS File No.: JPA 04-145
Project No.: HRF-SOM-0-810
Project: Somerton Avenue
Section: Somerton Avenue & Jefferson Street
TRACS No.: HF110 01C
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SOMERTON

THIS AGREEMENT is entered into 10th March, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SOMERTON, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of \$435,785.40 in Highway User Revenue Funds (HURF) in Fiscal Year 2005 to the City for roadway reconstruction on Somerton Avenue and Jefferson Street. Such funds will be repaid to the State by withholding from the YUMA METROPOLITAN PLANNING ORGANIZATION (YMPO) federal funds and the obligation authority for federal funds is \$492,219.78 in Fiscal Year 2005.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27412
Filed with the Secretary of State
Date Filed: 03/10/05

Janice K. Brewer
Secretary of State

By: Vincent J. Greenwald

II. SCOPE OF WORK

1. The City shall:

a. Provide design plans, specifications and such other contract documents and services required for bidding and roadway reconstruction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the \$435,785.40 project construction cost for Fiscal Year 2005, upon award of the construction project.

d. Invoice the State for thirty percent of the \$435,785.40 project construction cost for Fiscal Year 2005, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the \$435,785.40 project construction cost for Fiscal Year 2005 at the one hundred percent project construction completion stage, after the City, YMPO, and the State (ADOT) representatives have completed final project review.

2. The State shall:

a. Within 30 days after receipt of an invoice and a letter confirming the construction project has been awarded, advance the City thirty percent of the HURF funds.

b. Within 30 days after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the City HURF funds in the amount of thirty percent at each invoiced stage for construction.

c. After final project review, and within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the City HURF funds in the final ten percent amount of the \$435,785.40 for the roadway reconstruction in Fiscal Year 2005.

d. Withhold from YMPO, federal funds and the obligation authority of federal funds in an amount of \$492,219.78 in Fiscal Year 2005 for roadway reconstruction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies,

officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination"

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

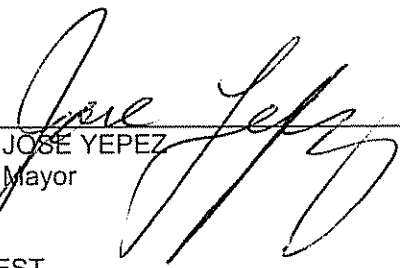
City of Somerton
City Manager
110 North State Avenue
Somerton, AZ 85350

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SOMERTON

STATE OF ARIZONA
Department of Transportation

By 
JOSE YEPEZ
Mayor
ATTEST

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

By 
CLIFF O'NEILL
City Clerk



OFFICE OF THE
MAYOR
CITY OF SOMERTON

Resolution

NO. 875

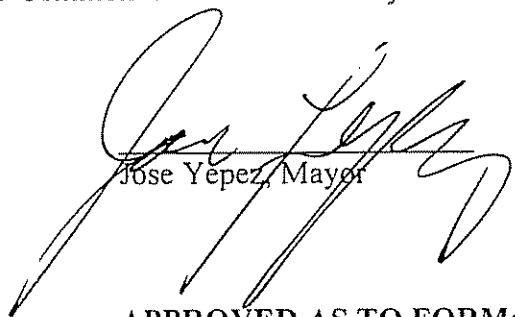
A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SOMERTON, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY MANAGER TO ATTEST TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SOMERTON ARIZONA AND THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION TO APPROVE THE EXCHANGE OF HIGHWAY USER REVENUE FUNDS (HURF) TO THE CITY IN FISCAL YEAR 2005.

WHEREAS, The city is desirous of entering into an Intergovernmental Agreement between the City of Somerton and the Arizona Department of Transportation for exchange of HURF funds to the City for roadway construction on Somerton Avenue.


BE IT RESOLVED, by the Common Council of the City of Somerton, Arizona as follows:

THAT, the City's Mayor is authorized to execute, and City Manager is authorized to attest to, on behalf of the City of Somerton, Arizona, that certain document entitled "INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND CITY OF SOMERTON, ARIZONA".


PASSED AND ADOPTED by the Common Council of the City of Somerton, Arizona this 15 day of February, 2005


Jose Yepez, Mayor

ATTEST:


Cliff O'Neill, City Clerk

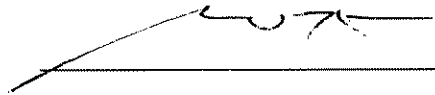
APPROVED AS TO FORM:


Gerald W. Hunt, City Attorney

APPROVAL OF THE CITY OF SOMERTON ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SOMERTON, an agreement among public agencies which, has been reviewed pursuant to A R S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 24th day of February, 2005

A handwritten signature in black ink, appearing to be 'C. W. T.', is written over a horizontal line.

City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0088TRN (**JPA 04-145**), an Agreement between public agencies, i.e., The State of Arizona and The City of Somerton, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 7, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section